

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CASE NO. CR06-157MJP
	)	
v.	)	Seattle, Washington
	)	July 11, 2012
HENRY CARL ROSENAU,	)	
	)	CHANGE OF PLEA
Defendant.	)	
	)	

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE MARSHA J. PECHMAN  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiff: SUSAN M. ROE  
MARC A. PEREZ  
ROBERT WESTINGHOUSE

For the Defendant: CRAIG PLATT  
ROBERT FLENNAGH

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## PROCEEDINGS

July 11, 2012

9:30 a.m.

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THE CLERK: United States of America v. Henry Rosenau, Case CR06-157MJP.

Counsel, please make your appearances for the record.

MS. ROE: Good morning, Your Honor. Susan Roe and Marc Perez on behalf of the United States, and Jennifer Hinckley, the case agent, is present at counsel table.

MR. PLATT: Good morning, Your Honor. Craig Platt for Mr. Rosenau, and Robert Flenbaugh is assisting today.

THE COURT: Good morning. Counsel, I've been informed that the defendant wishes to change his plea this morning; is that correct?

MS. ROE: I've been informed of that.

MR. PLATT: That's correct.

THE COURT: And I have been handed a copy of a plea agreement this morning, but I want to make sure that I have the latest version.

MR. PLATT: Actually, Your Honor, there have been some last-minute modifications made. I have the final version here, which Mr. Rosenau is about to sign. I'll hand that forward, if that's acceptable.

THE COURT: All right.

MR. PLATT: May I approach, Your Honor?

THE COURT: All right. Counsel, I see the changes on

1 the plea agreement. After we go through this process, I'm  
2 going to be asking that each of you initial those changes  
3 that were made, and I'm going to ask that Mr. Rosenau initial  
4 them as well.

5 Shall we begin the process? Mr. Rosenau, do you want to  
6 come up to the podium, please?

7 Mr. Rosenau, I'm going to be placing you under oath, sir,  
8 so can you please raise your right hand to be sworn?

9 HENRY C. ROSENAU, HAVING BEEN FIRST DULY SWORN,  
10 ANSWERED QUESTIONS AS FOLLOWS:

11 THE COURT: Mr. Rosenau, I'm going to be going  
12 through a series of questions with you. The purpose of that  
13 is to ensure that you understand what you are doing and what  
14 you are giving up by entering this plea with me this morning.  
15 So I'm going to be asking you a series of questions to make  
16 sure that you understand both the plea and what your rights  
17 are.

18 Let's start with you telling me what your full and  
19 complete name is.

20 THE DEFENDANT: Henry Carl Rosenau.

21 THE COURT: How old are you, Mr. Rosenau?

22 THE DEFENDANT: Sixty-one.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: Grade 10.

25 THE COURT: Are you able to read English?

1 THE DEFENDANT: Yes.

2 THE COURT: And can you tell me whether you have  
3 suffered from any mental illness or drug addictions in your  
4 past?

5 THE DEFENDANT: Not -- I have some alcohol, but I  
6 wouldn't call it an addiction, I guess.

7 THE COURT: Have you had anything today, any pills or  
8 any other stimulants that would cloud your thinking?

9 THE DEFENDANT: No. Well, I just have thyroid pills,  
10 and for diabetes. That's all.

11 THE COURT: Did you take your prescribed medications  
12 today?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you received a copy of the  
15 indictment against you?

16 THE DEFENDANT: Yes.

17 THE COURT: And let's talk a little bit about your  
18 relationship with your counsel, both with Mr. Flennaugh and  
19 with Mr. Platt. Are you satisfied with their representation?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you had enough time to speak with  
22 them about the choices that you're about to make this  
23 morning?

24 THE DEFENDANT: Yeah, I guess so.

25 THE COURT: Well, "I guess so" is not quite what I'm

1 looking for.

2 THE DEFENDANT: It seemed kind of rushed, but it was  
3 okay.

4 THE COURT: Let's talk about that. Are you asking me  
5 for more time in which to take a look at the plea agreement?

6 THE DEFENDANT: No.

7 THE COURT: Have you had an opportunity to discuss it  
8 with your lawyers?

9 THE DEFENDANT: Yes.

10 THE COURT: And were you able to read a copy of the  
11 agreement yourself?

12 THE DEFENDANT: Yes.

13 THE COURT: Did they read it to you, or did you read  
14 it to yourself?

15 THE DEFENDANT: They read it to me.

16 THE COURT: And do you trust that what they were  
17 reading was correct? Were you able to read along with them  
18 and check to make sure what they said was correct?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you understand the terms of the plea  
21 agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: Was there any vocabulary in the plea  
24 agreement that you did not understand?

25 THE DEFENDANT: Well, I don't know. I don't think

1 so. I mean...

2 THE COURT: Were you able to stop and ask what  
3 certain words meant if you had a question?

4 THE DEFENDANT: No, no, I understood the gist of it.

5 THE COURT: When you say you "understood the gist of  
6 it," I want to make sure that you understood not just the  
7 gist, but that you understand what you're doing, because once  
8 I accept your plea, there's no changing your mind. Do you  
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that according to this  
12 plea agreement I'm not bound by your agreement?

13 THE DEFENDANT: Yes.

14 THE COURT: Let's take a look at the agreement  
15 itself, shall we? Can you explain to me -- do you have a  
16 copy of it in front of you?

17 THE DEFENDANT: Yes.

18 THE COURT: Can you explain to me what the charges  
19 are that you are about to change your plea about?

20 THE DEFENDANT: Changing it to a lesser quantity of  
21 at least 100 kilograms of marijuana.

22 THE COURT: All right.

23 THE DEFENDANT: And it says I agree to waive the  
24 right and enter this plea of guilty on Count 1 to conspiracy  
25 to import marijuana.

1 THE COURT: Yes. You understand that you are  
2 pleading guilty to a crime that's entitled conspiracy to  
3 transport marijuana?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand they're going to lower  
6 the amount?

7 THE DEFENDANT: Yes.

8 THE COURT: Can you tell me what you think that  
9 significance is?

10 THE DEFENDANT: Ten-year mandatory to five-year --  
11 or, yeah.

12 THE COURT: So one of the significant things that you  
13 are gaining by the plea agreement is getting out from under  
14 the ten-year mandatory; is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: Let's talk about the elements of the  
17 offense. Do you understand the government has to prove that  
18 there was an agreement between two or more people to commit  
19 the acts that constitute the crime of conspiracy to import  
20 marijuana?

21 THE DEFENDANT: Yes.

22 THE COURT: And that you became a member of that  
23 conspiracy?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand they have to prove that

1     you, Harry Rosenau, were part of this conspiracy?

2             THE DEFENDANT: Yes.

3             THE COURT: Okay. And, Ms. Roe, can you recite for  
4     us, so that everybody understands, what you understand to be  
5     the penalties that have been outlined here?

6             MS. ROE: The penalties for this charge is not less  
7     than five years of imprisonment, up to 40 years of  
8     imprisonment, a fine of up to \$5 million possible, a period  
9     of supervised release following release from prison of at  
10    least four years, and a special assessment of \$100.

11            THE COURT: Okay. Do you understand that those are  
12    the maximum penalties that can be imposed?

13            THE DEFENDANT: Yes.

14            THE COURT: Do you have any questions about any of  
15    those?

16            THE DEFENDANT: No.

17            THE COURT: Now, you're giving up some very important  
18    rights that I want to review with you. Let's take a look at  
19    page 3.

20            Now, Mr. Rosenau, you've already been through one trial,  
21    so you understand that at trials we call in jurors, that your  
22    lawyers have an opportunity to question witnesses, that they  
23    have the ability to subpoena witnesses. Is there anything  
24    about your first trial that you did not understand or that  
25    you do not understand that you would be giving up?



1 THE DEFENDANT: No.

2 THE COURT: Okay. I'm going to go through each one  
3 of those things one at a time, because I want you to  
4 understand that each of those things is something that you  
5 have a right to go forward and do.

6 I've got 49 people waiting downstairs to come up and be  
7 seated as jurors, so you can have a trial if you want a  
8 trial. We're ready to go. Do you understand that you have a  
9 right not to plead guilty and to continue to maintain your  
10 innocence?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you also understand that you have a  
13 right to a speedy and a public trial?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you have a right  
16 to have effective assistance of counsel; in other words, a  
17 good lawyer by your side throughout all these proceedings?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that you have the right  
20 to be presumed innocent until guilt has been established  
21 beyond a reasonable doubt?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that you have a right  
24 to confront and cross-examine witnesses?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand you've got a right to  
2 compel witnesses to come testify on your behalf?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you also understand that you have  
5 a right to remain silent and you do not have to testify?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand that you also have  
8 a right to appeal any finding of guilt?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, you are going to be giving up each  
11 and every one of those rights if I accept your plea of  
12 guilty. Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Has Mr. Platt talked with you about the  
15 sentencing guidelines?

16 THE DEFENDANT: A certain amount, yes.

17 THE COURT: Do you understand that the sentencing  
18 guidelines are what the court uses as a guide to begin the  
19 evaluation process of what sentence should be imposed?

20 THE DEFENDANT: More or less, I guess.

21 THE COURT: Do you understand that the higher the  
22 weight of the drug, the higher the value?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you also understand that the court  
25 will take into account your past criminal history, if there

1 is any?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Roe, do you have an estimate as to  
4 what the criminal history is here?

5 MS. ROE: We have no criminal history, none regarding  
6 Mr. Rosenau.

7 THE COURT: So Mr. Rosenau would be a category one.

8 MS. ROE: We've operated on that assumption.

9 THE COURT: Okay. Now, as part of the sentencing  
10 guidelines, do you understand that Mr. Platt will be able to  
11 argue that the guidelines should be reduced based upon  
12 certain provisions in the guidelines, and that the government  
13 is probably going to argue that the guidelines should be  
14 increased. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that it's my job to  
17 decide what the correct guideline calculation is?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Has anybody promised you or  
20 guaranteed you what the sentence will be?

21 THE DEFENDANT: No.

22 THE COURT: Is there anyone who has made any threats  
23 to you in order to induce you to plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: Is there anyone exerting any pressure

1 upon you?

2 THE DEFENDANT: No.

3 THE COURT: Now, Mr. Rosenau, I know that you have  
4 counsel in Canada, and I know that you have others who have  
5 acted as legal advocates for you. Is anyone in Canada  
6 putting pressure upon you to change your plea?

7 THE DEFENDANT: No.

8 THE COURT: The next section on page 5 that I want to  
9 talk to you about is the statement of facts. There are  
10 several paragraphs there. Have you had an opportunity to  
11 read through them?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you agree that all of the things  
14 stated there are true?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, in your own words, I know your  
17 lawyers or the government wrote out those paragraphs, but I  
18 want to hear in your own words what you did that you think  
19 constitutes this crime.

20 THE DEFENDANT: I flew loads of marijuana from Canada  
21 into the U.S.

22 THE COURT: And when did you do that?

23 THE DEFENDANT: In '05.

24 THE COURT: And did you use your own helicopters?

25 THE DEFENDANT: Yes.

1 THE COURT: And did you fly alone?

2 THE DEFENDANT: Yes.

3 THE COURT: Who did you make this plan with?

4 THE DEFENDANT: I never even thought about it that  
5 way.

6 THE COURT: Obviously you picked up a load. Somebody  
7 had to agree to give it to you, somebody had to put it on the  
8 helicopter, and somebody had to unload it, so I'm asking you  
9 in your plea agreement, you're here to name several people  
10 that you participated with. Oh, I'm sorry. Some of them are  
11 blanked out.

12 Can you tell me who it is that you conspired with to do  
13 this with, who you made your plan with?

14 MR. PLATT: For the record, we'll object to that  
15 particular question. There's a possibility of Mr. Rosenau  
16 pursuing cooperation. We've not reached an agreement on that  
17 yet.

18 The paragraph at the end of the statement of facts,  
19 paragraph 7 there talks about individuals that he had flown  
20 across the border.

21 THE COURT: Okay. Well, then that's who -- some of  
22 them are crossed out. That's what I'm trying to get some  
23 clarity on as to who it is that he is naming as participants  
24 and who he is not.

25 THE DEFENDANT: Well, Dustin Haugen, I flew him

1 across the border, but I never had anything to do with him as  
2 far as any marijuana.

3 THE COURT: What about Braden Miraback?

4 THE DEFENDANT: I flew him across the border. He was  
5 a catcher, one of them. I don't know which one is which,  
6 Braden or the other one. I don't know which one is which.

7 THE COURT: What do you mean by the word "catcher"?

8 THE DEFENDANT: Somebody that catches the loads.

9 THE COURT: Catches the loads of marijuana?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. What about Zachary Miraback?

12 THE DEFENDANT: I don't know whether it was Zachary  
13 or Braden, because I don't know either of them. I never met  
14 them, but I know they were there.

15 THE COURT: What about Kip Whelpley?

16 THE DEFENDANT: Yeah, I know Kip Whelpley.

17 THE COURT: What did you do with Mr. Whelpley?

18 THE DEFENDANT: He was a catcher.

19 THE COURT: Now, the marijuana loads, are you in  
20 agreement that it was less than 100 kilos or 100 pounds,  
21 counsel?

22 MS. ROE: Kilograms.

23 THE COURT: Are you in agreement it was more than 100  
24 kilograms?

25 THE DEFENDANT: Yes.

1 THE COURT: Is there anything about those statements  
2 that you wish to retract or that you are telling me are not  
3 true at this time?

4 THE DEFENDANT: I think they're okay.

5 THE COURT: Sorry? Say that again, please.

6 THE DEFENDANT: I think they're okay.

7 THE COURT: In other words, you've had an opportunity  
8 to read it, and you're in agreement that those are the facts?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Can you tell me where it is you  
11 flew this helicopter, where you started and where you landed?

12 THE DEFENDANT: I flew it from Hope, B.C., and then  
13 dropped it off somewhere in the Okanogan -- in the --  
14 remember the maps we looked at? One of those points there.

15 THE COURT: So what I'm looking for is, you flew it  
16 across the Canadian-U.S. border and landed in the Okanogan  
17 area and dropped it off?

18 THE DEFENDANT: Yes.

19 THE COURT: Now, are there any offenses that you're  
20 aware of that the government is not going to pursue?

21 THE DEFENDANT: No, I guess.

22 THE COURT: Ms. Roe, is the government agreeing not  
23 to pursue any causes of action?

24 MS. ROE: There's no facts other than what -- Your  
25 Honor, we wouldn't be filing any other charges. We wouldn't

1 be pursuing anything else. This would be the end.

2 THE COURT: Okay. Now, I saw that there is a unique  
3 agreement, Mr. Rosenau, and one of those things is that you  
4 agree that you're going to dismiss and cooperate in  
5 dismissing any lawsuits that you've brought in Canada --

6 THE DEFENDANT: Yes.

7 THE COURT: -- stemming from this case and  
8 extradition.

9 THE DEFENDANT: Yes.

10 THE COURT: And you're agreeing that the suits are  
11 frivolous?

12 THE DEFENDANT: What does "frivolous" mean?

13 THE COURT: Frivolous means they're without validity.

14 THE DEFENDANT: I guess if I take the suit off, it  
15 will be frivolous, I guess, if I have it removed.

16 THE COURT: And that you're going to take steps to do  
17 that?

18 THE DEFENDANT: Yes. I can do that from the phone,  
19 from here. I have people assigned for me.

20 THE COURT: Well, I've listened to you talk to some  
21 of the people that you have signing authority for. The only  
22 thing I'm concerned about is whether or not you can control  
23 them.

24 THE DEFENDANT: My wife has to. The woman who was  
25 here with my daughter, and she's perfectly normal, so to



1 speak.

2 THE COURT: As contrasted to the other person who's  
3 been representing you?

4 THE DEFENDANT: Yes.

5 THE COURT: One of the things that you are giving up  
6 in this particular plea agreement is that you are giving up  
7 or waiving any right to appeal. Do you understand --

8 THE DEFENDANT: Yes.

9 THE COURT: -- that you will not have a right to ask  
10 the Ninth Circuit Court of Appeals to correct any errors that  
11 may have been made?

12 THE DEFENDANT: Yes.

13 THE COURT: Except if there are issues that concern  
14 the effectiveness of counsel, or if there are errors made at  
15 the time of sentencing. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Rosenau, can you tell me in your own  
18 words why it is you want to do this?

19 THE DEFENDANT: I feel that by my telling the truth,  
20 that being a Canadian I'll probably get a treaty transfer and  
21 I'll probably not have to do a whole bunch of time.  
22 Otherwise, I'd probably be going to trial.

23 THE COURT: Do you understand that nobody can promise  
24 you a treaty transfer?

25 THE DEFENDANT: No, I understand that. I'm hoping

1 and praying it will happen.

2 THE COURT: And do you understand that the government  
3 is basically, as I understand it, not going to take a  
4 position one way or the other on the treaty transfer?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand that there is no  
7 way to know, if you are granted a treaty transfer, how long  
8 you would serve in Canada?

9 THE DEFENDANT: Yes.

10 THE COURT: And you're still willing to give up your  
11 right to a trial based upon that possibility?

12 THE DEFENDANT: Yeah. Well, the way I feel, in  
13 Canada, once I go back to Canada, being a marijuana charge, I  
14 will be working again right away.

15 THE COURT: Do you understand you're going to be here  
16 in the United States until --

17 THE DEFENDANT: Yes.

18 THE COURT: -- a treaty transfer is granted?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. Is there anything that you need to  
21 consult with Mr. Platt about before I ask you the next  
22 question?

23 THE DEFENDANT: No. He just said "yes" for the  
24 answers.

25 THE COURT: Well, I'm the person that has to be

1 satisfied for all what you're doing. Mr. Platt doesn't have  
2 to be satisfied. I'm the one who has to be satisfied, and  
3 "yes" or "no" doesn't always cut it with me. So I want to  
4 make sure you know what you're doing.

5 THE DEFENDANT: I think I do.

6 THE COURT: All right. Now, Mr. Platt, have you had  
7 an opportunity to consult with your client and advise him  
8 what it is that he is giving up by entering the plea?

9 MR. PLATT: Yes, Your Honor.

10 THE COURT: And has Mr. Rosenau exercised his rights  
11 to ask you questions and demand explanations?

12 MR. PLATT: A great deal, Your Honor, yes.

13 THE COURT: Are you satisfied that he understands the  
14 terms and conditions of the plea agreement?

15 MR. PLATT: Yes, Your Honor.

16 THE COURT: Are you aware of any impediment to his  
17 being able to make this decision today?

18 MR. PLATT: Not at this time.

19 THE COURT: Mr. Rosenau, do you want to now accept  
20 your plea?

21 THE DEFENDANT: Yes.

22 THE COURT: And what is the plea that you would like  
23 to enter?

24 THE DEFENDANT: Guilty, I guess.

25 THE COURT: Ms. Roe, is there anything else you want

1 me to cover?

2 MS. ROE: Your Honor, Mr. Westinghouse wishes to  
3 address the court.

4 MR. WESTINGHOUSE: May I address the court?

5 THE COURT: Yes, go ahead.

6 MR. PLATT: May we sit down, Your Honor?

7 THE COURT: Well, I don't know what Mr. Westinghouse  
8 is going to say.

9 MR. WESTINGHOUSE: Your Honor, I want to bring to the  
10 court's attention that prior to the court coming onto the  
11 bench today, Mr. Rosenau and Mr. Platt asked if the United  
12 States would agree to have Mr. Rosenau cooperate. I  
13 responded that we would certainly listen to whatever he had  
14 to say, that we would advise the court as to whatever benefit  
15 the United States realized from what he had to say, but there  
16 were absolutely no guarantees, no commitments on the part of  
17 the United States. It was not a part of the agreement, and  
18 he should not rely on any facet of cooperation in deciding  
19 whether to plead guilty.

20 Mr. Rosenau stated that he understood, but I wanted to  
21 make certain that was on the record, and I would respectfully  
22 ask the court to inquire that that is certainly Mr. Rosenau's  
23 understanding. There is absolutely no guarantee, no  
24 commitment on the part of the United States with respect to  
25 any cooperation.

1 THE COURT: Except to listen.

2 MR. WESTINGHOUSE: Except to listen. We have no idea  
3 what he will say or whether it will be of any benefit to the  
4 United States and further law enforcement efforts. We're  
5 willing to listen, and we'll certainly bring to the court's  
6 attention any benefit we realize from whatever Mr. Rosenau  
7 has to say, but there's absolutely no commitment, and I  
8 wanted that to be perfectly clear to Mr. Rosenau.

9 THE COURT: All right. Mr. Rosenau, you just heard  
10 Mr. Westinghouse, it sounds to me, six ways from the middle,  
11 telling you he's not promising you anything.

12 THE DEFENDANT: Yes.

13 THE COURT: But you understood that?

14 THE DEFENDANT: Yes.

15 THE COURT: One thing he did promise was to listen.

16 THE DEFENDANT: Yes.

17 THE COURT: So with that understanding that you have  
18 not been promised anything by the government, do you still  
19 wish to have me accept your plea?

20 THE DEFENDANT: Yes, yes, Your Honor.

21 THE COURT: Mr. Rosenau, is this your signature on  
22 the page that I'm looking at here?

23 THE DEFENDANT: Yes.

24 THE COURT: And, Mr. Platt, is that your signature as  
25 well?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: As well as Ms. Roe and Mr. Perez?

3 MS. ROE: Yes, Your Honor.

4 MR. PEREZ: Yes, Your Honor.

5 THE COURT: I will accept the plea, Mr. Rosenau. It  
6 appears to me that it's knowing and voluntary and that you  
7 understand what it is you're giving up and what you're  
8 bargaining with the United States.

9 Now, Mr. Rosenau, we're going to be writing a report about  
10 you. The probation department is going to write me a report,  
11 and they'll be coming to interview you. Do I have your  
12 promise that you'll cooperate with them with that report?

13 THE DEFENDANT: Yes.

14 THE COURT: I use that report in order to decide what  
15 the appropriate sentence is, and so they will be writing  
16 about your background, your education, any mental health  
17 issues, what your family is, what your criminal history is,  
18 and I'll be using that to decide what the appropriate  
19 sentence is, along with the material written by defense  
20 counsel, and along with the material written by the  
21 government.

22 Is there anything else that you want to bring forward or  
23 any other question that I can answer for you?

24 THE DEFENDANT: I don't know of anything to ask.

25 THE COURT: You don't have to ask anything. I'm

1 basically giving you the opportunity.

2 THE DEFENDANT: No, yeah.

3 THE COURT: Thank you, sir.

4 THE DEFENDANT: I wish I was in Canada.

5 THE COURT: You wish you were in Canada? Well,  
6 sorry. You're here. You may have a seat, sir.

7 All right. The plea agreement, I'm going to pass down.  
8 I'm going to ask that Mr. Rosenau initial where it is the  
9 changes have been made, and that Ms. Roe, on behalf of the  
10 government, and Mr. Platt, if you could also please initial  
11 the sections there.

12 MS. ROE: Thank you, Your Honor. If I may step  
13 forward, I've initialled the changes on pages 5 and 6 on  
14 behalf of the government.

15 THE COURT: The sentencing date will be October the  
16 5th at 1:30. Is that acceptable, counsel?

17 MR. PLATT: I believe so, Your Honor.

18 MS. ROE: Yes, Your Honor. Thank you.

19 THE COURT: All right. Counsel, I wanted to speak  
20 with you about the timing of this plea and the extraordinary  
21 hardship that you've put the court and your jurors through.  
22 Can you explain to me why it is that this plea could not have  
23 been negotiated in a more timely way?

24 MS. ROE: Your Honor, we were contacted yesterday  
25 afternoon.

1 MR. PLATT: Your Honor, all I can inform the court is  
2 that, without revealing any confidential communications, my  
3 client was anticipating that the government would make a  
4 last-minute offer or request a continuance or that there  
5 would be some other complication with respect to the trial,  
6 and the simple answer to your question is, he is being given  
7 advice by a large amount of people besides myself, and,  
8 frankly, I think he got confused by that. He was listening  
9 to people in detention and had been listening to people in  
10 Canada and so on, and I think he allowed that to influence  
11 him. It was certainly not bad faith on his part. He was  
12 confused and worried and did the best he could in the  
13 situation. But as of yesterday, he said, well, I think maybe  
14 I just want to do this, so I replied.

15 THE COURT: Well, I'd like everybody to know what the  
16 American people give up when somebody delays like this.  
17 There are 49 people downstairs who have come in from all  
18 parts of the district. They've given up their work, they've  
19 given up their play, they've inconvenienced their families,  
20 and it costs about 5,000 bucks for the government to bring  
21 them in for a single day. So all of those people have come  
22 for naught today. If this were a civil case, I would be  
23 assessing costs to both parties for failing to negotiate in a  
24 timely manner.

25 Now, I can't tell you also the cost for the attorneys to



1 get ready, for Mr. Platt and Mr. Flennaugh to get ready to do  
2 this, Mr. Rosenau, but the cost is significant. I drove 430  
3 miles in the past 24 hours in order to be here to be able to  
4 do that. Today there are 125 probation officers that this  
5 district is hosting who are in town that I had to ask to be  
6 inconvenienced in order to be here. All of those things are  
7 very significant. So I'm asking everybody in this room, that  
8 when you are working in the system, that all the parts are  
9 dependent upon one another. It's incumbent upon everybody  
10 not to waste the money of the public and not to waste the  
11 time of the public. Ms. Miller came back from a conference  
12 to be here with us, my law clerks were here until nine  
13 o'clock last night working on the materials being filed, and  
14 all of that costs the public. So, Mr. Rosenau, I'm sorry  
15 that you were listening to others, but you caused a  
16 tremendous hardship for everybody here.

17 THE DEFENDANT: I'm very sorry, Your Honor.

18 THE COURT: Okay. All right. Anything else we need  
19 to take care of?

20 MS. ROE: Not from the government, Your Honor.

21 MR. PLATT: No, Your Honor.

22 THE COURT: Okay. We'll be at recess.

23  
24 (THE PROCEEDINGS CONCLUDED.)  
25

## C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 10th day of October 2012.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter